

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF
EDUCATION

Jane Bamberg

v.

Providence School Board

Rhode Island Department of
Elementary and Secondary Education

v.

Jane Bamberg

DECISION

Held: The School Board demonstrated good and just cause for Ms. Bamberg's termination. Although there is evidence that Ms. Bamberg had an exceptional record as a teacher and was highly thought of by colleagues both in Rhode Island and Wisconsin, an altercation with a student at Mount Pleasant High School on May 20, 2011 provided sufficient cause for her termination as a tenured teacher. This same incident, coupled with a misrepresentation on her most recent application for re-certification, provides cause for the revocation of her teaching certificates by the Commissioner of Elementary and Secondary Education pursuant to R.I.G.L. 16-11-4.

DATE: September 25, 2014

Travel of the Case

On December 8, 2011, the Appellant, Jane Bamberg, filed an appeal challenging the legality of her termination by the Providence School Board with Commissioner Deborah A. Gist. The appeal was referred to Hearing Officer Forrest Avila, who addressed preliminary issues in the case and a ruling on pre-hearing discovery was issued by Mr. Avila on October 11, 2012. Following Mr. Avila's retirement, the case was reassigned to the undersigned on August 26, 2013. At that point in time, the appeal had been consolidated with Ms. Bamberg's request for a hearing on a recommendation that had been made by the Office of Educator Quality and Certification (a division at the Rhode Island Department of Elementary and Secondary Education) to revoke her teaching certificates. Written notice of the Department's recommendation had been sent to Ms. Bamberg on September 24, 2012.

Upon notification from the Appellant's counsel that pre-hearing discovery issues had been resolved, the termination appeal and certificate revocation hearing were scheduled for hearing. These consolidated matters were heard on dates agreed to by all parties, scheduled on seven (7) hearing dates between October 9, 2013 and February 7, 2014. Thereafter, the parties submitted written memoranda summarizing their legal arguments, a process that was completed on July 14, 2014. The record in these consolidated matters closed at that time.

Although the School Board takes the position that its termination of Ms. Bamberg was pursuant to R.I.G.L. 16-12-6, Ms. Bamberg invokes her rights as a tenured teacher under the Teachers' Tenure Act and the Commissioner's authority to hear appeals under R.I.G.L. 16-13-4. We find that jurisdiction to hear the issues related to Ms. Bamberg's termination properly arises under both R.I.G.L. 16-13-4 and 16-39-2. Authority to hear all issues related to the revocation of Ms. Bamberg's certification (and to consolidate such hearing with her termination appeal) arises under R.I.G.L. 16-11-4 and the Rules Governing Annulment of Certificates issued by the Commissioner on May 1, 1985.

ISSUES:

- I. Has the Providence School Board proven that good and just cause supported its termination of Ms. Bamberg?
- II. Has the Rhode Island Department of Elementary and Secondary Education proven that cause exists for revocation of the teaching certificates currently held by Ms. Bamberg?

Findings of Relevant Facts:

- Jane Bamberg was a tenured teacher in the Providence School Department, assigned to Mount Pleasant High School during school year 2010-2011. App. Ex.I-33; Tr. pp. 212-213. She taught Chemistry, LEP Chemistry and Advanced Placement Environmental Science during the 2010-2011 school year. Tr. p.213.
- On November 22 and November 23, 2010, the Acting Principal of Mount Pleasant High School, Oscar Paz, met with Ms. Bamberg to provide her with guidance as to how to handle difficult situations with students. He instructed Ms. Bamberg that she should not confront and/or argue with students and that she should not approach or question any student if she felt for any reason that the interaction would turn into an argument or confrontation. She was instructed to call the school administration for assistance. This discussion was documented in a memorandum prepared by Mr. Paz on November 29, 2010. PSB Ex. 3. Tr. pp. 130- 131.
- During the 2010-2011 school year, a specific protocol¹ was developed to assist Ms. Bamberg in dealing with behavioral issues that had arisen with respect to a particular student in her LEP Chemistry class, Student P.C. The protocol to be followed was for Ms. Bamberg to call the office whenever P.C. needed to be

¹ The protocol was also referred to in testimony as a “behavior management plan” for Student P.C. The plan was not in writing. Ms. Bamberg testified that the protocol was that she was to call the central office, but not necessarily that she was to wait for an administrator to remove P.C. from her classroom. However, she acknowledged her prior testimony that the protocol was to call Mr. McCarthy, one of the Assistant Principals at Mount Pleasant, and that he would remove P.C. from the classroom when necessary. Tr. pp. 228-230; 352.

removed from the classroom and an administrator would come to remove her. Tr. pp. 221-230.

- On May 20, 2011 Ms. Bamberg attempted to remove P.C. from her LEP Chemistry class. The student had arrived late to class, refused to work on the assignment Ms. Bamberg had prepared and refused to leave the class after at least two requests by Ms. Bamberg that she do so. Tr. pp. 214-270.
- When P.C. continued to refuse to leave the classroom, Ms. Bamberg tipped over her desk and its attached chair in which the student was seated, causing P.C. to fall to the floor. Instead of then complying with Ms. Bamberg's repeated request to leave the room, the student got up, picked up her desk and resumed her seat. Ms. Bamberg, who had walked away, turned around and again approached the student and tipped the desk for the second time. The student again fell to the floor. Both student and teacher were agitated and upset, with voices raised and the student yelling "hell" (in Spanish) "what the f+++" (in English) and "record everything" (in Spanish) and Ms. Bamberg yelling "pick your butt up" and "let's go" (both in English). Tr. pp. 49-51; 74-75; 445-459; 467-470; 485-488; PSB Ex. 2.
- As the student continued to refuse to leave the classroom, Ms. Bamberg grabbed the strap of her purse, which was over her shoulder, and pulled on it, dragging the student toward the front of the classroom. Ms. Bamberg used her weight to pull the student forward, stopping several times as the student resisted her efforts and pulled back forcefully. Both student and teacher continued to speak in loud voices and the classroom erupted into chaos. The student eventually relinquished her bag to Ms. Bamberg, who then walked toward the front of the classroom. Tr. pp. 52-53; 446-449; PSB Ex. 2.
- Prior to the altercation with this student, Ms. Bamberg had gone to the other side of the partition that separated her classroom from that of a neighboring teacher and asked her colleague to watch her class because she wanted to take a student to the office. The neighboring teacher, Helaine Hager, testified that she asked Ms. Bamberg if she could call the office for her using her cell phone and Ms. Bamberg

answered “No” and indicated that she “wanted to remove the student immediately”. Tr. pp.47-48.

- This same neighboring teacher called² the administrative office when she heard “troubling, loud voices” from the other side of the partition and went over to see part of the altercation between Ms. Bamberg and P.C. (Tr. pp. 48-53). Acting Principal Oscar Paz arrived at Ms. Bamberg’s classroom a few minutes later. He asked Ms. Bamberg what had happened and she replied that she “had a student that refused to leave the room”. Tr. pp. 90-91. When he inquired further as to why she had asked the student to leave, Ms. Bamberg responded that P.C. was “being disruptive”. Tr. p. 92. When Mr. Paz directed P.C. twice to “step outside the the classroom,” the student complied. When later requested to go to the office, she went to the office to wait for him. Tr. pp. 91-95. When Mr. Paz asked the student what had happened with Ms. Bamberg, she responded (in Spanish) “she dumped me” or “she dropped me”. Tr. pp. 98-101.
- Prior to leaving the area of Ms. Bamberg’s classroom, Mr. Paz confiscated an iPod belonging to another student. It contained a video he had filmed of a portion of the altercation between Ms. Bamberg and P.C. Tr. pp. 92-95. After watching the video with P.C. in his office, Mr. Paz asked her if she was okay or needed medical assistance. She indicated that she did not need medical assistance. Mr. Paz called her mother, told her that there had been a “physical interaction between her (daughter) and her teacher” and asked the mother to pick her up from school. Tr. pp. 101-108.
- Mr. Paz retained possession of the iPod and sent the student who filmed the video back to class,³ Mr. Paz watched the video again before calling an administrator at central office for guidance on appropriate follow-up. Tr. pp. 103-104.

² She used her cell phone after trying unsuccessfully to use the telephone on the wall on her side of the partition. The phone in Ms. Hager’s classroom was the only phone for the three classrooms that had been set up in the former weight room in the basement of the school, including Ms. Bamberg’s classroom. App. Ex.D; Tr. pp. 51-52;76;815.

³ Mr. Paz reprimanded the student for videotaping while he was in class. Tr.p.103.

- Dr. Tomas Ramirez, the district's Assistant Superintendent of Human Resources, directed Mr. Paz to get witness statements from the students in Ms. Bamberg's class, to make copies of the video, and to dismiss Ms. Bamberg from school for the rest of the day. Tr. pp. 103-105.
- Mr. Paz, accompanied by a union representative, went to find Ms. Bamberg to inform her that she was being dismissed from school for the rest of the day. He called Ms. Bamberg out of the cafeteria where she was having lunch with a group of teachers and advised her that she was being dismissed for the remainder of the day. She repeatedly asked why⁴ and, for the first time, indicated "something about being hit or hurt with a desk..." Mr. Paz told her to "see the school nurse if she needed medical assistance". Tr. pp. 105-106; 163.
- Ms. Bamberg was seen by the school nurse before she left school that day. According to an "Accident Report Form" filed by Ms. Bamberg, the nurse checked her "lower right ankle" and "shin" that was "bruised and red" and where a diabetic sore had "split open". A description of how the accident occurred is included in this same form. It states that a "Student desk impacted right ankle during student/teacher altercation. Desk leg slammed into ankle/shin". In an attached form entitled "Notification of Medical Treatment and Release Form" Ms. Bamberg indicates that she did not require medical treatment for her injuries. The form was signed by Ms. Bamberg on May 20, 2011 and by Mr. Paz on May 22, 2011. App. Ex. E and F. Tr. pp. 163-166; 365.
- That same day Mr. Paz brought the iPod, together with copies of the video, to Dr. Ramirez' office where together they watched the video on the iPod. Tr. pp. 103-109; p.718.
- After conducting a fact finding hearing as required by the Providence Teachers' Collective Bargaining Agreement, Dr. Ramirez met with the Superintendent⁵ at

⁴ Mr. Paz replied that he "could not comment" and that Dr. Ramirez would be in contact with her. Tr. p.105.

⁵ Superintendent Brady is identified as being involved in the initial discussion of the altercation that occurred on May 20, 2011. The record does not indicate whether Mr. Brady continued to hold the position of Superintendent at the time the recommendation of termination was made to the Providence School Board in August of 2011. Neither the Superintendent's recommendation nor the Board's initial decision is contained in the record. The November 29,

which time he made a recommendation that Ms. Bamberg be terminated. Tr. pp. 128; 773. Sometime in early August of 2011, the Superintendent presented a termination recommendation to the Providence School Board and it voted to terminate her at that time. Tr. pp. 761; 766-767. On November 22, 2011 after a hearing, the full Board voted to uphold its previous decision. Joint Ex. 1.

- The student involved in the altercation with Ms. Bamberg was suspended as a result of the incident on May 20, 2011. Tr.p. 761. Ms. Bamberg was charged with simple assault. After a trial in Rhode Island District Court on August 5, 2011, she was found not guilty. App. Ex. L.
- Ms. Bamberg filed a “Transitional/1 Year Professional Application Form” with the Rhode Island Department of Elementary and Secondary Education (RIDE) on August 23, 2011 in which she responded “Yes” to the question “Are you the subject of disciplinary action in your present employment?” She attached a written explanation that “I was falsely accused of assault of a student for which I was recently acquitted. The matter is now pending appeal based upon this result”. App. Ex. H.⁶
- Approximately one year later on August 27, 2012, Ms. Bamberg submitted another certification application to RIDE- a “General Application Form” to renew her teaching certification. At this time she answered “No” to the question “Are you the subject of disciplinary action in your present employment” and answered “No” in response to the question “Have you ever been dismissed from any employment or have you ever resigned from any employment following the initiation of disciplinary action?” RIDE Ex. B.
- Both of the aforementioned application forms noted in a section on “Required Information” that “...the failure to answer a question truthfully may result in disqualification”. RIDE Ex.B; App. Ex. H.

2011 decision of the full Board affirming its earlier decision is in the record indicates that Susan F. Lusi had assumed the position of Superintendent by that time. Joint Ex.1.

⁶ In renewing Ms. Bamberg’s certification at that time, Lisa Foehr, RIDE’s Director of Educator Quality and Certification, notified Ms. Bamberg by letter dated September 13, 2011 that an investigation was ongoing and that RIDE reserved the right to initiate action against her certification, if circumstances warranted. RIDE Ex. C.

- Ms. Bamberg received many accolades during the period of time that she taught at the high school and college level in the state of Wisconsin. She was recognized as a distinguished educator, included in Who's Who Among America's Teachers for several years and nominated for the Presidential Award for Excellence in Math and Science Teaching. Her most recent nomination for the Presidential Award for Excellence in Math and Science Teaching was by one of her colleagues at Mount Pleasant High School in 2011. App. Ex.I.
- Since relocating from Wisconsin in 2006, Ms. Bamberg was employed in the Providence school system. She received very positive evaluations in 2007 and 2009 as a science teacher at the high school level and attained tenure at the end of the 2008-2009 school year. App. Ex. C and I; Tr..

Positions of the Parties

Appellant Jane Bamberg

Jane Bamberg's position is essentially that her termination by the Providence School Board is based on action she was required to take to protect herself and her students from a highly disruptive student with a history of violent behavior. The Appellant submits that she was faced with a crisis and responded appropriately and with reasonable force, even though she had not received the required training in physical restraints from the Providence School Department.

The entire context of the May 20, 2011 incident involving Mrs. Bamberg must be considered in determining if there was just cause for her termination. During the 2010-2011 school year, teachers at Mount Pleasant High School faced a chronic lack of administrative support in trying to impose discipline on unruly students and were under pressure to reduce the number of suspensions so that the school's rating would improve based on this statistic. There were long response times when teachers made disciplinary referrals to the administration. Teachers were left to handle often- challenging behaviors of their students on their own because telephones in classrooms did not work more often

than they did work. By May of 2011 the student body had been emboldened by the knowledge that all Providence teachers had received dismissal notices.⁷

The Appellant submits that this situation, along with Student P.C.'s "violent" disciplinary history, explains Jane Bamberg's actions on May 20, 2011. Ms. Bamberg had no choice but to physically remove Student P.C. from her classroom that day. At some point in trying to remove P.C. from the classroom, this student slammed her desk into Ms. Bamberg's leg. Ms. Bamberg was called upon to make a split-second decision on how to protect herself, and the other students, from an outburst of violence. Furthermore, she had to do so without the benefit of training in the use of physical restraint, training which teachers are supposed to receive each year but was not provided to teachers at Mount Pleasant.

Even if a copy of the original video of the incident⁸ is viewed as admissible evidence, it fails to demonstrate that Ms. Bamberg used unreasonable force in removing a highly disruptive, even assaultive, student from the room. Counsel for the Appellant put forth the theory that the video shows that, to some extent, the incident was staged by P.C. in an attempt to "set up" Ms. Bamberg. The student can be heard on the videotape repeatedly telling her classmates to "tape it, tape it". The classroom is in complete disorder. P.C. defies a directive to go to the principal's office, and takes her seat. Ms. Bamberg approaches the desk, takes hold of it, and tips it. The student "slides" out easily, first onto one leg, then another, landing on the floor uninjured. While seated on the floor, P.C. nonchalantly flips a pencil and continues to be non-compliant, loud and disruptive. The student can be heard using profanity and, just before Ms. Bamberg takes hold of her handbag, P.C. raises a clenched fist to her. Even at this point in the altercation, Ms. Bamberg carefully limits her physical intervention to leading the student by her shoulder bag for just a few seconds in an attempt to remove her from the classroom. Ms. Bamberg then abandons this effort when P.C. relinquishes her handbag.

⁷ Assertions of a fiscal crisis in the city of Providence had caused notices of termination to be sent to all of the teachers employed in the Providence School Department. Ms. Bamberg and other teachers called as witnesses in this case, testified that the "mass termination" of Providence teachers in February 2011 had exacerbated disciplinary problems at Mount Pleasant High School.

⁸ Counsel for Ms. Bamberg valiantly presented a host of reasons why a copy of the original video should not be admitted into evidence. However, after its authentication by a witness to the incident, it was marked as PSB Ex. 2 over objection. Tr. pp. 591-606.

The Appellant contends that the tape substantiates that there was a need for Ms. Bamberg's immediate action to remove P.C. from the classroom. The classroom was completely out of control with P.C. repeatedly defying her, using profanity and then raising a clenched fist, a physical threat. Most importantly, even before the film began to roll, P.C. had assaulted Ms. Bamberg by shoving her desk into Ms. Bamberg's leg and opening up a pre-existing sore⁹. Under these conditions, Ms. Bamberg had no choice but to take immediate action to remove P.C. from the room to quell the classroom disturbance and stop the physical threats. This action was warranted in light of the fact that prompt administrative assistance could not be expected when a call for assistance was made to the office, a fact substantiated by the testimony of teachers at the school.

In the Reply Memorandum filed on Ms. Bamberg's behalf, counsel argues that in taking the position that Ms. Bamberg's only option was to wait for an administrator to remove P.C. from the room and insisting that she was required to comply with the directive that only administrators could remove students (Memo of July 11, 2014 at pages 4-5) RIDE and the School Board place teachers in an untenable position. Such directives "force teachers to remain passive when a student is throwing the classroom into a near-riotous condition, and even making veiled threats". Inflexible obedience to such a directive does not allow a teacher to respond as necessary to evolving circumstances. The Appellant argues that unsafe conditions for students and teachers alike will result if the Providence School Department's policy is endorsed by the Commissioner's ruling in this appeal. Forcing teachers into passive roles prevents them from exercising their authority to act in loco parentis to protect students, such as Ms. Bamberg was required to do in this case. Teacher passivity invites disturbances and bullying and creates an atmosphere in which learning cannot take place. These consequences must be considered in reviewing Ms. Bamberg's termination and considering whether or not it is appropriate to revoke her teaching certificate.

As to the allegation that her August 27, 2012 Application for Certification to RIDE contained a misrepresentation, counsel for the Appellant contends that an

⁹ Ms. Bamberg's has diabetes and bruises easily. Tr. p.248.

admittedly-inaccurate statement on her Application cannot be viewed in a vacuum. First, Ms. Bamberg had already disclosed the May 20, 2011 incident in the written explanation she provided in her answers to questions contained on her August 23, 2011 Application for Transitional Certification. Thus, her mistake in checking off “No” in answer to the question as to whether she had ever been dismissed from employment was not an attempt to conceal the incident from RIDE. In fact, RIDE had acknowledged its full awareness of the incident and in a letter to Ms. Bamberg dated September 13, 2011 notified her that it was conducting an investigation into the matter.

Given the thoroughness of her past disclosures it is not conceivable that Ms. Bamberg was deliberately attempting to conceal these facts when she made a “stupid mistake” when checking off the boxes on her August 27, 2012 Application. This error, then, cannot constitute “cause” to revoke her certificates.

If the Commissioner nonetheless finds that Ms. Bamberg’s behavior was unreasonable or inappropriate, she asks that the extraordinary conditions present at Mount Pleasant and in her classroom that day mitigate any penalty. The failure of the district to provide her with training in the use of physical restraint should also be a mitigating factor, just as it was in the case of Proto v. Providence School Board¹⁰, a case in which the Commissioner overturned a five (5) day suspension of a teacher in part because he had not received training in the use of physical restraint. Counsel submits that the sanction of termination is simply not warranted in this case. Jane Bamberg has had an exemplary career, both in Wisconsin and during the years she has worked in Rhode Island. During her years of service to the Providence School Department she has been evaluated as an outstanding teacher, she actively contributed to the development of the district’s curriculum in secondary science and has garnered the respect of her peers.

Based on the record in this case there is insufficient evidence of “cause” for her termination and even less so for the revocation of her teaching certificates.

Providence School Board

¹⁰ Decision of the Commissioner dated January 27, 2006; affirmed by the Board of Regents on July 13, 2006.

In its Post-hearing Memorandum, the Providence School Board takes the position that ample just cause for Ms. Bamberg's dismissal has been proven. As stated in the School Board's decision of November 29, 2011, Ms. Bamberg:

- ✓ made inappropriate physical contact with a student;
- ✓ overturned a student's desk while the student was seated;
- ✓ grabbed and dragged the student by a handbag;

The physical altercation with Student P.C. was not only unnecessary, but also contrary to the written directive she had received on November 29, 2010 that she was not to engage in confrontations with her students. Her use of physical force in responding to Student P.C.'s behavior on May 20, 2011 also deviated from the specific protocol that had been developed so that when P.C. needed to be removed from class, this could be accomplished safely. Instead of following the protocol and calling for a designated administrator to remove P.C., Ms. Bamberg determined that she would physically remove this student herself, because she wanted to do so "immediately". Her decision to do this, and the resulting physical altercation with P.C. in front of an entire classroom of students, constitutes just cause for her termination.

A student who sat directly in front of Student P.C. in Ms. Bamberg's LEP Chemistry class testified that a verbal exchange began when P.C. arrived late to class and Ms. Bamberg told her she needed to go to the office to get a pass. When P.C. continued to refuse to leave and Ms. Bamberg insisted that she do so, the testimony was that Ms. Bamberg said to her "do you want me to get you out of the class or are you going to get out of the class by yourself?" Ms. Bamberg then proceeded to "dump" P.C. out of her desk and onto the floor- not just once, but twice. As the arguing continued, Ms. Bamberg tried to pull P.C. out of the classroom by the handbag she was wearing on her side. P.C. was heard to say "what the f***" and "tape it" and resisted being pulled out of the classroom. The altercation ended only when P.C. removed her shoulder bag and handed it to Ms. Bamberg.

None of the justifications advanced by the Appellant for her use of physical force are valid, the Board submits. There is no evidence that P.C. was disciplined for engaging in any type of physical violence during the school year. Her disciplinary history consisted of tardiness, coming to class unprepared, arguing and being disruptive in class. Although Ms. Bamberg and other Mount Pleasant teachers testified that the 2010-2011 school year was fraught with disciplinary issues exacerbated by the mass termination of all teachers, all except Ms. Bamberg testified that the established protocol required a teacher to call for an administrator if a student needed to be removed from the classroom. Although the district acknowledged there were issues with classroom phones frequently not working, and not working on May 20, 2011 in particular, Ms. Bamberg's inability to use the single wall phone accessible to all three teachers in this area of the basement is not relevant. The evidence in this case indicates that she had two other options. She could have asked Mr. Morra, her colleague in the next room, to go upstairs to contact an administrator as she had done on several occasions in the past. Ms. Bamberg also declined the offer of her colleague, Helaine Hager, to use her cell phone to call the office for an administrator to come down to remove P.C. The evidence in this case demonstrates that Ms. Bamberg made a conscious choice not to call administration and therefore not to follow the protocol and the behavior management plan that had been put in place to deal with P.C.'s behavioral issues.

Counsel for the School Board does not agree that Ms. Bamberg's use of physical force was precipitated by an "assault" committed by Student P.C. when she allegedly pushed her desk and "slammed" it into Ms. Bamberg's leg. Ms. Bamberg could not recall or describe exactly how P.C. had shoved the desk into her leg and when asked to demonstrate how P.C. had injured her, could not do so. The Board's counsel argues that the law of physics undermines any contention that a seated student could move the desk in such a way as to cause injury to Ms. Bamberg's lower leg. The School Department submits that Ms. Bamberg was more likely injured when she tipped over P.C.'s desk, consistent with the testimony of Student E.G., who sat directly in front of P.C.

The School Department argues that Ms. Bamberg's actions were extreme and outrageous and amounted to nothing less than physical abuse. The evidence clearly

establishes that Ms. Bamberg was determined to personally remove P.C. from her classroom against her will, even if this involved physical force and a risk of injury. The district argues that a student has a basic educational right to be safe in the hands of his or her teacher and when this right is violated, a school committee has good and just cause to dismiss a teacher. This is because the continued employment of such a teacher presents an unreasonable risk of foreseeable harm to students. As the video vividly demonstrates, Ms. Bamberg's "total loss of control" escalated a non-violent power struggle into a physical altercation with a student. Her termination is the appropriate sanction. Principles of progressive discipline to do not preclude dismissal in cases in which a teacher's actions calls into question whether future students are safe in his or her care.

The Providence School Board submits that the Commissioner should affirm the Board's decision to dismiss Ms. Bamberg for cause. The implications that her conduct has for the district in terms of ensuring the safety of students and Ms. Bamberg's inability to serve as a role model for students require this.

Rhode Island Department of Education

The Department characterizes the incident that occurred on May 20, 2011 as a totally inappropriate, teacher-initiated, two-part physical escort. In response to P.C.'s refusal to leave the classroom, Ms. Bamberg responded by tipping the student's desk, dropping her to the floor and then using the student's purse strap as a leash in an attempt to lead her out of the room. This inexcusable and unjustified use of force against a student is in contravention of the provisions of the Rhode Island Code of Professional Responsibility and the Rhode Island Professional Teaching Standards cited in the September 24, 2012 notice to Ms. Bamberg. It is also contrary to the Board of Education's Physical Restraint Regulations¹¹.

¹¹ The Department argues in its Memorandum that a training checklist signed by Ms. Bamberg on August 30, 2010 (PSB Ex. 5) flatly contradicts her testimony that she had not received physical restraint training prior to May 20, 2011. The Regulations were violated when Ms. Bamberg used physical intervention, manual or mechanical restraint or escort involving physical contact with a student when it was not necessary to prevent harm or injury as a crisis intervention.

The Department concedes that what is depicted on the video is not the entire incident. However, there has been no evidence submitted that any data, exculpatory or otherwise was deleted from the video after it was recorded. Ms. Bamberg herself could not specify any discrepancy between her memory of the incident and what is depicted on the video. The Appellant's expert testified that in his opinion any reliance on a copy was misplaced and that it would be of benefit to the fact finder if the original video were available. The Department notes, however, that the expert's testimony did not establish that the copy of the video that was admitted into evidence failed to accurately represent the events that were recorded on May 20, 2011. The testimony of Ms. Hager and Student E.G. corroborate what is shown in stark detail on the video. A preponderance of evidence supports a finding that Ms. Bamberg dropped P.C. on to the classroom floor not once, but twice and then dragged her by the purse strap around her body toward the front of the classroom. The evidence here documents Ms. Bamberg's egregious unprofessional behavior in front of her class on May 20, 2011. There is nothing to justify the manner in which she treated this student, in the Department's view.

Ms. Bamberg demonstrated a lack of credibility in providing her account of the events that preceded the video recording. She was unable to answer certain questions or to explain her version of events that occurred prior to or during the clip captured on video. Her lack of credibility is further demonstrated by her "no" answers to questions 1 and 2 on her August 27, 2012 certification application form. Her unexplained failure to answer one of those questions in the affirmative constitutes a misrepresentation on her certification application, which is a ground for revocation.

The Department has proven the two items of cause provided in its notice to Ms. Bamberg. Taken together, RIDE asserts, they provide sufficient cause for the revocation of her Rhode Island educator certification.

DECISION

There is clear and convincing evidence in this case that Ms. Bamberg, a highly effective teacher of challenging subject matter, engaged in a physical altercation to

forcibly remove a student from her classroom on May 20, 2011. This occurred despite the fact that there was a behavior management plan in place for this student to avoid precisely what occurred on May 20, 2011. In deciding to forcibly remove P.C. from the classroom, Ms. Bamberg not only declined to follow the plan that was in place to deal with P.C.'s defiant and disruptive behavior,¹² but she also ignored written instructions from her employer that she was not to confront any student but was to call the office if there was a need to remove a student from class. This unequivocal directive had been discussed with her and confirmed in a written memorandum dated November 29, 2010 from her Principal, Oscar Paz.

The incident of May 20, 2011 is described in the testimony of a neighboring teacher, the colleague who offered to help Ms. Bamberg by using her cell phone to contact the office to remove P.C. - an offer that Ms. Bamberg refused. It is also described in the testimony presented by the School Board and RIDE from another student in the class, who testified in a low voice about her recollection of her teacher "dropping" a noncompliant P.C. onto the floor of the classroom, not once, but twice and then pulling her by her backpack toward the front of the room. A portion of the physical altercation that took place was also captured on a videotape filmed by another student. Both the Appellant and an expert witness she presented described certain technical differences between the original video and the copy that was admitted into evidence as PSB Exhibit 2. After the video had been authenticated by an eyewitness as a fair and accurate depiction of the events that day, Ms. Bamberg continued to disagree with the proposition that the tape was "accurate". During questioning from counsel from the School Board, Ms. Bamberg had opportunity to explain how the video was, to her recollection, inaccurate. She did not. The video shows Ms. Bamberg's aggressive physical contact with P.C., forcefully overturning her desk and pulling P.C. by the strap of her purse, as they continue to argue loudly in front of an entire class of shocked students. The acts depicted in the video are corroborated by testimony in this record.

¹² Ms. Bamberg herself had written several disciplinary referrals for P.C., including one on January 24, 2011 for P.C.'s "chronic verbal arguments, disruptive behaviors and work refusal". There is no record of a "violent" disciplinary history for this student.

Ms. Bamberg's behavior is not excused by Mount Pleasant's difficult disciplinary climate, the administration's slow response rate to disciplinary referrals made by teachers or the fact that all Providence teachers had been terminated in February of 2011. These facts are not relevant to a specific situation in which a teacher had received written notice during the school year that she was not to confront or engage in altercations with students. The context that the Appellant urges us to take into account fades in light of evidence of the behavior management plan that had been put in place for dealing with situations in which P.C. might need to be removed from the classroom. Ms. Bamberg did not follow the instructions she had received on November 29, 2010 or the behavioral management plan when she attempted to forcibly remove P.C. from her classroom. We find, based on the facts here, that nothing warranted her deviation from instructions or the plan, particularly not P.C.'s behavior.

The claim that there was an "emergency" precipitated by an assault on Ms. Bamberg was not proven by a preponderance of evidence in this record. When Ms. Bamberg went over to Ms. Hager's side of the partition, she had already decided that she was going to remove P.C. herself and not call for assistance¹³ from the office, an inexplicable decision if she had already been assaulted and Ms. Hager was offering to use her cell to call the office for assistance. Ms. Bamberg herself could not testify with any specificity as to how P.C. had pushed her desk in such a way that it made contact with Ms. Bamberg's shin, given the size and shape of a similar desk utilized during her testimony. Her claim that she was assaulted by P.C. is undermined by the fact that she made no mention of an assault when Mr. Paz came to remove P.C. from the classroom and asked her what had happened. She responded that she had attempted to remove a disruptive student-no mention of any assault. Although Ms. Bamberg may have been injured during the altercation with P.C., the facts of this case make it more likely that she was injured by the leg of the desk that she overturned (twice) and not because of an assault by this student.

¹³ Ms. Bamberg testified that she unsuccessfully attempted to use the wall phone before going over to Ms. Hager's side of the partition to ask her to keep an eye on her class, but the single wall phone for the three classrooms was located on Ms. Hager's side of the partition.

The Appellant submits that the failure of the School Department to provide her training in proper physical restraint policies and techniques is a mitigating factor,¹⁴ citing Proto v. Providence School Board.¹⁵ The facts in the case that the Appellant cites were that Mr. Proto was utilized as a critical part of the behavior management plan of a special education student who had anger management issues. The student was routinely sent from his special education classroom to Mr. Proto's room where Mr. Proto would work with him to get his behavior under control. Mr. Proto's undisputed lack of training in physical restraints placed him at a predictable disadvantage that became evident when the student was subsequently injured when Mr. Proto attempted to restrain him. Mr. Proto's need to use appropriate physical restraint was foreseeable, given the role his employer had given him in the student's behavior management plan. The district had been placed him in an untenable position and the Commissioner overturned the district's decision to discipline him under such circumstances.

The circumstances of this case are much different. Ms. Bamberg's role in P.C.'s behavior management plan did not contemplate her physical interaction with P.C. She was to call for an assistant principal when P.C.'s behavior required her removal from the classroom. Additionally, every teacher from Mount Pleasant who was called to testify, except Ms. Bamberg, indicated that it was administrators, and not teachers, who were authorized to remove students from the classroom. If in fact she did not receive training in proper use of physical restraints,¹⁶ under the facts here such a failure on the part of the district did not place Ms. Bamberg in an untenable position. In fact, her employer had done everything it could to remove Ms. Bamberg from any situation in which her use of physical restraint would become necessary. As previously indicated, her employer had clearly notified her that she was to refrain from engaging in physical interactions with

¹⁴ Both the Appellant and the School Board also rely on the Physical Restraint Regulations as either authorizing or prohibiting Ms. Bamberg's conduct. The Appellant points out that the Regulations authorize physical interventions in "emergency situations" while the School Board and RIDE argue that there was no "emergency situation" since there was no threat of imminent, serious physical harm at the time Ms. Bamberg attempted to forcibly remove P.C.

¹⁵ Decision of the Commissioner dated January 27, 2006; affirmed by the Board of Regents on July 13, 2006.

¹⁶ Four teachers from Mount Pleasant, including Ms. Bamberg, testified that they had not received the required annual training in the state's Physical Restraint Regulations, yet Ms. Bamberg signed a form stating that she had received training in the "Physical Restraint Policy" on August 30, 2010. We need not resolve this disputed fact because it is, under the facts of this case, irrelevant. However, the Providence School Board and Superintendent are directed to review the issue and confirm that the required annual training is being provided to Providence teachers within thirty (30) days of this decision.

students in general and with this specific student. There was no emergency or crisis that justified her actions. Thus, we find that any lack of training in physical restraint is not relevant in this case and does not excuse Ms. Bamberg's conduct.

We find that there is sufficient good and just cause for Ms. Bamberg's termination. The argument that the district's duty to ensure the safety of students trumps principles of progressive discipline is a convincing one. If given a "second chance" it is likely that Ms. Bamberg's conduct would be repeated. She has not assured her employer that such an incident will not happen again. Throughout the hearing, Ms. Bamberg sought to justify her actions, rather than to recognize that they were inappropriate. In her Memorandum she argues that she and other teachers should not follow the policy and protocol in place at Mount Pleasant that teachers must call and wait for administrative staff if a student needs to be removed from the classroom. Rather, she takes the position that the district and its students are better served when teachers do not remain passive but rather act in loco parentis to protect students from unsafe conditions. In light of these arguments, it is clear that her retention would undermine the School Department's decision that the best way to ensure student safety is to remove teachers from often volatile and dangerous student disciplinary situations. The School Department has the prerogative to determine how it will ensure that students, and teachers, remain safe in school and limit the district's exposure to liability.

It is also our finding that Ms. Bamberg's ability to function as a role model for students was also compromised by her conduct on May 20, 2014. As argued by the School Board and RIDE, she escalated a situation of disobedience and defiance into one of a physical altercation. This occurred in front of the entire class. Students need to observe their teachers as controlled professionals, using non-violent measures to address defiant and disobedient behavior. In Ms. Bamberg's view she was justified in taking matters into her own hands and forcibly removing P.C. This demonstrates that she is not willing to model the non-violent behavior that the Providence School Department wishes teachers to impart to its students.

The false statement on Ms. Bamberg's August 27, 2012 application to RIDE stands unexplained on this record. Ms. Bamberg testified that although she recalled

applying for Rhode Island teacher certification in August of 2012, she did not recall filling out a certification application and submitting it to RIDE. She did not recognize the paperwork associated with her August 27, 2012 Application. Tr. pp. 286-301; 314. Her counsel argues that the inaccurate response of “No” to the question of whether she had ever been dismissed from any employment was a “stupid mistake”. There is no testimony in the record to support this conclusion. One would have expected Ms. Bamberg to have familiarized herself with her August 27, 2012 Application for Certification prior to testifying, since RIDE had sent her a letter of notice that it sought to revoke her certification based on a “misrepresentation” she had made in this document. Yet, Ms. Bamberg could provide no explanation for the inaccurate information since, according to her testimony, she did not recognize her August 27, 2012 Application.

We are constrained to find that the false statement on the Application submitted by Ms. Bamberg on August 27, 2012 was an intentional misrepresentation. Her prior disclosure of the incident to RIDE one year previously does not diminish the fact that this information was false. The potential to mislead staff at RIDE existed because an inference was created that the previously-disclosed pending “disciplinary action” had been resolved in Ms. Bamberg’s favor. The fact that RIDE became aware from other sources or through independent investigation that Ms. Bamberg had been dismissed does not relieve Ms. Bamberg from the consequences of making a misrepresentation on the documentation she filed with RIDE.

This misrepresentation, taken together with the May 20, 2011 incident, provides sufficient grounds for the revocation of her certification and all certificates Ms. Bamberg presently holds in Rhode Island are hereby revoked.

Her appeal is denied and dismissed.

Kathleen S. Murray, Hearing Officer

Deborah A. Gist, Commissioner

DATE: September 25, 2014